S.B.Civil Revision Petition No.220/2006

M/s. Madan Textile and others.
vs.
State Bank of India.

Date : 22.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manoj Bhandari, for the petitioners.
Mr. JK Chanda, for the respondent.

- - - - -

At the request of learned counsel for the parties, this revision petition is finally heard and decided.

The petitioner has preferred this revision petition to challenge the order dated 20.3.2006 by which the executing court dismissed the petitioner/judgment debtor's application filed under Section 47 read with Order 21 Rules 2, 2A and 58 CPC.

Brief facts of the case are that the plaintiff/ respondent bank filed a suit for recovery of Rs.3,55,489.44p. The said suit was decreed by compromise through Lok Adalat. The compromise was filed in the Court itself signed by both the parties on 29.3.2001. In pursuance of the said compromise, the trial court passed the decree that as per the guidelines of Reserve Bank of India, both the parties have settled the suit amount for

Rs.2,10,000/-. As per the settlement, petitioner/borrower deposited Rs.55,000/- with bank by cheque no.612593 dated 16.3.2001 and which was honoured on 21.3.2001. The petitioner shall pay the balance amount of Rs.1,55,000/- in 12 equal monthly installments with interest at the rate of 12% p.a. on reducing balance mode. It was also provided in the decree that the petitioner/borrower shall pay the entire amount within a period of one year upon which the respondent bank shall hand over the title deeds to the petitioner and also release the goods from hypothecation and shall also issue no objection certificate in favour of the petitioner. It is also provided that the bank has relinquished the bank's rest of the claim.

It appears that the petitioner/borrower did not deposit the amount as per the decree. However, according to the petitioner/judgment debtor, the petitioner requested the respondent bank to give some more benefit under One Time Settlement Scheme. This offer was made by the petitioner/borrower in the year 2003 which was accepted by the respondent bank by making endorsement on the petitioner's offer letter itself. However, this amount too was not deposited by the petitioner for two years and ultimately, on 31.3.2005, the petitioner deposited Rs.1,57,576/-. According to the petitioner/ borrower, in the receipt dated 31.3.2005, there is a clear mention that the said amount has been deposited by the petitioner in full and final settlement of the claim of the respondent bank. This amount was accepted by the respondent bank

itself which is evident from the sign of the officer of the bank on the deposit receipt. Therefore, in view of the said settlement between the parties and deposit of entire decretal amount by the petitioner and further in view of the subsequent settlement between the parties of all claim of the bank for a sum of Rs.1,57,576/-, the respondent bank had no right to execute the decree. Despite this fact, the respondent bank launched execution wherein the petitioner submitted objections under Section 47 read with Order 21 Rules 2 and 2A CPC.

According to learned counsel for the petitioner, the executing court committed serious error of law in rejecting the petitioner's application on the ground that the executing court cannot decide about the executability of the decree. On this ground, the executing court did not even inquire into the settlement between the parties and total payment of decretal amount by the petitioner/judgment debtor. Therefore, the petitioner has challenged the executing court's order dated 20.3.2006 by preferring this revision petition.

Learned counsel for the respondent bank vehemently submitted that the suit claim was settled between the parties by written compromise and in pursuance of which, the Court passed the decree on 29.3.2001. It is clear from the decree that the petitioner was under an obligation to pay Rs.1,55,000/- in 12 equal monthly installments with interest at 12% p.a., however, with concession of making

payment in 12 monthly installments. It is submitted that in case, the petitioner would have deposited the amount as per the installments, he would have got the benefit on levy of interest by charging interest by reducing balance mode. The petitioner did not deposit any amount, therefore, the amount of Rs.1,55,000/- carries interest at the rate of 12% p.a. In view of the above, the respondent bank is entitled to recover the amount of interest even as per the decree dated 29.3.2001.

I considered the submissions of learned counsel for the parties and perused the agreement between the parties, the alleged bank receipt produced by the petitioner as well as the letter on the basis of which according to the petitioner, the bank agreed to accept the lesser amount than the decretal amount.

It is clear from the decree itself that the trial court passed the decree on the basis of compromise between the parties. The petitioner deposited Rs.55,000/- in pursuance of the said compromise with the respondent bank. The decree says that the petitioner shall be liable to pay Rs.1,55,000/- which shall be paid within one year in 12 equal installments with interest at the rate of 12% p.a. So far as payment of entire amount along with interest at the rate of 12% p.a. is concerned, the petitioner was given concession so that the petitioner may deposit entire amount in 12 equal installments and within one year from the date of decree. The component of interest is separate and the decree nowhere states that after expiry of one year or 12

months, levy of interest at the rate of 12% p.a. shall cease to operate even in case, the amount is not deposited by the judgment debtor in pursuance of the decree. Therefore, the decree is unambiguously clear determining the liability of the judgment debtor and that is Rs.1,55,000/- and further liability of judgment debtor i.e. for payment of interest at the rate of 12% p.a. The interest is continuing interest till the amount is paid, may it be within one year or one day, the interest is chargeable only on the amount due. 12 monthly installments gave benefit of payment of total amount in 12 equal installments. The language of the decree made it clear that any amount if will be deposited by the petitioner, the bank shall not charge any interest over that amount alone. Therefore, interest over the amount due against the petitioner is clearly provided till full amount is paid by the petitioner.

In view of the above, the liability of the petitioner is not only to the extent of Rs.1,55,000/- or with interest over it upto the period of one year only. So far as settlement between the petitioner and respondent bank in the year 2003 is concerned, admittedly, the petitioner gave offer in writing for settlement of the claim under one time settlement scheme in the year 2003 which was accepted by the respondent bank and admittedly that benefit was not availed by the petitioner himself by deposit of due amount in the bank. Without having any new settlement, if the petitioner has deposited the amount and which was accepted by the bank clerk sitting on the cash accepting window,

cannot be treated to be a new settlement between the bank and borrower. There is no prima-facie material available on the record which supports the contention of the petitioner that the person who accept the amount vide receipt dated 31.3.2005 was competent to enter into compromise between the petitioner and respondent bank.

Consequently, this revision petition, having no merit, is hereby dismissed. However, it may be observed that the executing court was totally wrong when it observed that it cannot examine the inexecutability of the decree under Section 47 CPC but that will not help the petitioner in any manner because on merits, the petitioner has no case and the respondent bank has right to execute the decree to recover the interest amount also from the judgment debtor.

(PRAKASH TATIA), J.

S.Phophaliya